

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARCO MALDONADO,	:
	:
Plaintiff,	: CIVIL ACTION
	: No. 2:22-cv-3474
	:
v.	:
	:
CITY OF PHILADELPHIA, et al.,	:
	:
Defendants	:
	:

DEFENDANTS, CITY OF PHILADELPHIA, MICHAEL CAHILL, BRUCE DOUGHERTY, AND BRUCE DENOBLE'S ANSWER, WITH AFFIRMATIVE DEFENSES, TO PLAINTIFF'S AMENDED COMPLAINT

Defendants the City of Philadelphia, Michael Cahill, Bruce Dougherty, and Bruce DeNoble, (collectively, the “Answering Defendants”), hereby file this Answer, with Affirmative Defenses, to Plaintiff’s Amended Complaint and aver as follows:

I. Preliminary Statement

1. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff’s statement of the case and, therefore, require no response. To the extent a response is required, denied.

2. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff’s statement of the case and, therefore, require no response. To the extent a response is required, denied.

II. Jurisdiction

3. Answering Defendants admit only that this Court has jurisdiction over this matter. The remaining allegations contained in this paragraph constitute conclusions of law and, therefore, require no response. To the extent a response is required, denied.

III. Parties

4. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

5. Admitted in part, denied in part. Admitted only that the City of Philadelphia is, and at all relevant times was, a municipality located in the Commonwealth of Pennsylvania. The remaining allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

6. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

7. The allegations contained in this paragraph are directed to a Defendant other than the Answering Defendants and, therefore, require no response. To the extent a response is required, denied.

8. The allegations contained in this paragraph are directed to a Defendant other than the Answering Defendants and, therefore, require no response. To the extent a response is required, denied.

9. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

IV. Factual Allegations

10. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

11. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

12. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

13. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

14. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is

required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

15. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

16. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

17. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

18. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

19. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

20. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

21. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

22. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

23. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or

information sufficient to form a belief as to the truth of the averments contained in this paragraph.

All allegations are therefore denied.

24. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

All allegations are therefore denied.

25. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

All allegations are therefore denied.

26. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

All allegations are therefore denied.

27. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

All allegations are therefore denied.

28. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

29. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

30. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

31. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

32. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or

information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

33. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

34. Admitted.

35. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

36. The Third Circuit's order is a matter of public record in writing and speaks for itself. To the extent the averments attempt to characterize that written document, those characterizations are denied.

37. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

38. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is

required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

39. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

40. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph. All allegations are therefore denied.

41. Admitted that on April 19, 2021, Plaintiff pled no-contest to third degree murder, was found guilty, and sentenced to 10 to 20 years of state incarceration. As to the remainder of the averments in this paragraph, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to their truth, and they are therefore denied.

42. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

43. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

44. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

45. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

46. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

47. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

48. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

49. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

50. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

51. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

52. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

53. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

V. Causes of Action

COUNT I: 42 U.S.C. § 1983 Deprivation of Liberty without Due Process of Law and Denial of a Fair Trial Under the Fourteenth Amendment

54. No response is required.

55. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

56. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

57. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT II: 42 U.S.C. § 1983 Civil Rights Conspiracy

58. No response is required.

59. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

60. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

61. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT III: 42 U.S.C. § 1983 Failure to Intervene

62. No response is required.

63. As this claim has been dismissed, no response is required.

64. As this claim has been dismissed, no response is required.

65. As this claim has been dismissed, no response is required.

COUNT IV: 42 U.S.C. § 1983 Municipal Liability Claim

66. No response is required.

67. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

68. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

69. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT V: Damages

70. No response is required.

71. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT VI: Punitive Damages

72. No response is required.

73. The allegations contained in this paragraph constitute conclusions of law and/or the Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

JURY DEMAND

Answering Defendants demand a jury trial in this action.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim against the Answering Defendants upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Answering Defendants assert all of the defenses, immunities, and limitations of damages available to them under the "Political Subdivision Tort Claims Act" and aver that Plaintiff's

remedies are limited exclusively thereto. Act of Oct 5, 1980, No. 142, P.L. 693, 42 Pa. C.S.A. § 8541 et seq.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of qualified immunity because, at all times material hereto, the individual Answering Defendants were carrying out their duties in a proper and lawful manner, and in the exercise of good faith.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable Statute of Limitations.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that he has failed to take reasonable measures to mitigate any or all damages.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, insofar as Answering Defendants' purported actions or omissions were not the proximate cause of any alleged injury, loss, or damage incurred by the Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

At all times material to this civil action, the individual Answering Defendants acted in a reasonable, proper, and lawful manner.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by collateral estoppel / issue preclusion.

NINTH AFFIRMATIVE DEFENSE

The acts of prosecutors, criminal defense attorneys, and judges involved in Plaintiff's criminal litigation were a superseding cause of the harm he suffered and thus preclude a finding of liability against the Answering Defendants.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's criminal charges were held over at a preliminary hearing, and the holding over of criminal charges is affirmative evidence of probable cause.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).

TWELTH AFFIRMATIVE DEFENSE

Plaintiff's no contest plea bars him from proceeding with this suit. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973).

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff was and is guilty of the homicide of Alberto Gonzales Sr., and Answering Defendants reserve the right to prove his guilt by a preponderance of the evidence at the trial of this matter.

FOURTEENTH AFFIRMATIVE DEFENSE

At all times through the criminal trial of Plaintiff, probable cause existed for his arrest.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's injuries and/or damages as alleged were caused by his own criminal acts or omissions, or the criminal acts or omissions of others.

WHEREFORE, the Answering Defendants deny that they are liable to Plaintiff, either jointly or severally and demand judgment in their favor, together with reasonable attorney's fees and the costs of defending this action.

Respectfully submitted,

Date: August 4, 2023

/s/ Danielle E. Walsh

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*Attorney for Defendants City of
Philadelphia, Michael Cahill, Bruce
Dougherty, and Bruce DeNoble*

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v.	:
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CITY OF PHILADELPHIA, et al.,	:
	:
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	:

CERTIFICATE OF SERVICE

I hereby certify that on the date below, Defendants' Answer with Affirmative Defenses to Plaintiff's Amended Complaint was filed via the Court's electronic filing system and is available for downloading.

/s/ *Danielle E. Walsh*
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Date: August 4, 2024